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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
10 AT TACOMA

11 PHILLIP MICHAEL SCHAAF,

12 Appellant,

13 v.

14 MICHAEL G. MALAIER, Chapter 13  
15 Trustee, and MARK D. WALDRON,  
16 Chapter 7 Trustee,

17 Appellees.

CASE NO. 19-5312 RJB

ORDER DENYING MOTION TO  
REOPEN CASE

18 THIS MATTER comes before the Court on the Appellant's motion to reopen his case.

19 Dkt. 11. The Court has considered the motion and remaining file.

20 On April 17, 2019, this case was transferred from the U.S. Bankruptcy Appellate Panel of  
21 the Ninth Circuit. Dkt. 1. It is an appeal of an order from *In re Schaaf*, U.S. Bankruptcy Court  
22 for the Western District of Washington case number 18-42254, Dkt. 76, entitled, "Order on  
23 Trustee's Objections to Exemptions." Dkt. 1. On May 22, 2019, Mr. Schaaf filed a motion for  
24 extension of time to "complete the record," which was construed by the Court to be a motion for

1 extension of time for him to file a statement of issues and designate those portions of the record  
2 which were relevant. The Appellees did not respond to the motion.

3 On June 4, 2019, Mr. Schaaf's motion was granted and he was given until July 5, 2019 to  
4 file a statement of issues and designate those portions of the record which were relevant. Dkt. 7.  
5 On July 11, 2019, the U.S. Bankruptcy Clerk of the Court filed a Notice of Appeal Status/Notice  
6 of Deficiency which indicated that the statement of issues and the designation of the record had  
7 not been filed. Dkt. 8. Mr. Schaaf did not respond.

8 On July 15, 2019, Mr. Schaaf's appeal was dismissed without prejudice under Fed.  
9 Bankr. P. Rule 8009 (a)(1), for failure to file a statement of issues and designate the items to be  
10 included in record for the appeal. Dkt. 9.

11 On July 29, 2019, Mr. Schaaf filed the instant motion, "requesting reinstatement of [his]  
12 appeal." Dkt. 11. He asserts that he has hired a lawyer. *Id.*

### 13 **DISCUSSION AND DECISION**

14 Under Fed. R Bankr. P. Rule 8009 (a)(1), an "appellant must file with the bankruptcy  
15 clerk and serve on the appellee a designation of the items to be included in the record on appeal  
16 and a statement of the issues to be presented." District courts may impose sanctions, including  
17 dismissal, upon any bankruptcy appellant who fails to take steps required to prosecute an appeal.  
18 *See Greco v. Stubenberg*, 859 F.2d 1401, 1404 (9th Cir. 1988). "In determining whether to  
19 dismiss an appeal on such grounds, a district court must consider (1) alternative measures in lieu  
20 of dismissal, and (2) whether the conduct giving rise to the dismissal was caused entirely by the  
21 party's attorney." *Id.*

22 Mr. Schaaf's motion to reopen his appeal should be denied. No attorney has entered a  
23 notice of appearance for him in this appeal. Mr. Schaaf did not file a statement of issues or  
24

1 designate those portions of the record which are relevant to his appeal. The reasoning from the  
2 July 15, 2019 order dismissing the appeal still applies and is adopted here. This case should  
3 remain closed.

4 **IT IS ORDERED:**

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  - The Appellant's motion to reopen his case (Dkt. 11) **IS DENIED.**

6 The Clerk is directed to send uncertified copies of this Order to all counsel of record and  
7 to any party appearing *pro se* at said party's last known address.

8 Dated this 20<sup>th</sup> day of August, 2019.

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10 ROBERT J. BRYAN  
11 United States District Judge  
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